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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,284	12/09/2003	Markus Nesper	HOE-790	4912
20028	7590	06/25/2008		
Lipsitz & McAllister, LLC				
755 MAIN STREET				
MONROE, CT 06468				
EXAMINER				
SHAFFER, RICHARD R				
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
06/25/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,284

Applicant(s)

NESPER ET AL.

Examiner

Richard Shaffer

Art Unit

3733

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-19 and 22-33 is/are pending in the application.
- 4a) Of the above claim(s) 25, 26 and 29-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-19, 22-24, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 7th, 2008 has been entered.

Double Patenting

The amendments to the claims filed on April 7th, 2008 have defined the claimed invention over the claimed inventions found in the 7,238,188 patent, 10/911,982 application, and the 11/702,258 application. Therefore, the previous Double Patenting rejections have been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-19 and 22-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Jameel et al (US Patent 5,584,856).

Jameel et al disclose a device (**Figures 1-3**) comprising: an inner abutment element (**12**); an outer abutment element (**13**); at least one tension band (**14**) guidable

through rounded openings (**19**, see **Figure 3**) in the outer abutment element (**13**); one or more hook elements (a group of **28** for one interpretation or the entire element **15** in a second interpretation); a height of one or more hook elements is greater than a height of the at least one tension band (height being measured along the longitudinal axis of **15** in **Figure 1**; further "a height" doesn't require the measurement to be the entire measurement of the height dimension also allowing a small height measurement of the tension band to be used for interpretation especially when the shapes are cylindrical); the at least one tension band (**14**) is fixable relative to the outer abutment element (**13**) by complete penetration of the hook elements (apparent in **Figures 1 and 2**); at least in the area of the at least one tension band where penetration occurs, a width if taken along the longitudinal axis is five times greater than the height of the at least one tension band or if taken perpendicular to the height and longitudinal axes is also at least five times greater than the height (as described above due to a full dimensional measurement required to meet "a height"; a width of the at least one tension band is in a region of between 25% and 75% of a width dimension of one of said abutment elements; the at least one tension band is bendable (see end of **24**, **Figure 2**) fastened within the inner abutment element due to the bend; the tension band is passed through two-spaced apart openings (if taking the middle band **14** in **Figure 2**, the band has two components **24** passing into two symmetric holes); the two components (**24**) comprise two substantially parallel regions with the bend (initially) formed in-between them; the spacing of the openings in the inner abutment element (**12**) are less than an 1/8 of a width of a dimension of the inner abutment element (**12**); the edges of the inner

abutment openings (32) are rounded off (see **Figure 1**); the rounded openings (19) of the outer abutment element (13) have a deflection edge so a tensile force can be exerted upon the tension band transverse of a direction of spacing between the inner (12) and outer (13) abutment elements; the tension band (14) is positioned at right angles relative to the abutment elements (see **Figures 2 and 3**); the hook elements (either all of 15, or grouping of 28 both having a row of spaced-apart hook elements) having a steep flank and an inclined flank; the hook elements are disposed on the outer abutment element (see **Figure 2** depicting them touching the outer abutment element); and the hook elements are orientated transversely of a direction of spacing between the inner abutment element and the outer abutment element.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Shaffer whose telephone number is (571)272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard Shaffer/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733